IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3381 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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VALJIBHAI KANSUNDRA - Petitioner
Versus
JIVRAJ RAGHUUBHAI BAVARVA & 2 - Respondents

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Appearance :
MR ASHISH M DAGLI for Petitioner.
RULE SERVED for Respondents.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 14/08/2007
ORAL JUDGMENT

1. The petitioner – original plaintiff in the suit has filed this petition under Article 227 of the Constitution of India praying for quashing and setting aside the order dated 28.02.2003 passed by the learned Joint Civil Judge (Senior Division), Morbi in Regular Civil Suit No. 723 of 2002 below an application Exh. 115.

2. It is the case of the petitioner that the petitioner has filed the suit for declaration and permanent injunction. According to the plaintiff, the respondent No. 2 is not the legal heir of Raghubhai Govabhai and accordingly, he has no right, title or interest in the property of Raghubhai Govabhai. It is also the case of the plaintiff that the plaintiff is having documentary evidence to prove that he is the legal heir of Shri Raghubhai Govabhai and he is also having evidence in support to justify his contentions. The plaintiff in his deposition before the Trial Court has stated that the respondents have given Power of Attorney to one Narbheram Bhanjibhai. The said Power of Attorney in his deposition has denied entire factual aspect by saying that he is not aware about the facts. It is also the say of the plaintiff

that the Power of Attorney has made contrary deposition and showed ignorance in respect of the relation between the parties which was the main contention in the suit.

3. Application Exh. 115 is given with the prayer to recall the deposition of defendants. It was prayed before the Trial Court that the Power of Attorney is given by defendants to one Narbheram Bhanjibhai Patel who is not aware about any of the facts and is also not aware about the pedigree and hence, the prayer was made to recall the deposition of the defendants and the alternative prayer was made to pass an order of commission to have the deposition of the defendants. The learned Joint Civil Judge (S.D.), Morbi vide his order dated 28.02.2003 has rejected the said applications and held that since the evidence of the plaintiff was over and the defendants have examined Narbheram Bhanjibhai vide Exh. 85 and his cross-examination is in progress, the application given by the plaintiff is improper and not tenable and it is also contrary to the provisions of law.

4. It is this order of the Learned Trial Judge which is under challenge in the present petition.

5. It is the say of the petitioner before this Court that the Learned Trial Judge has committed a serious error of law by rejecting the application Exh. 115 as the persons who are shown in the application at Exh. 116, whose evidence is required as some of the persons are signatory to the pedigree issued by Gram Panchayat in the year 1932. The deposition of the plaintiff was made on 24.07.2000 and thereafter the matter was pending for the evidence of the plaintiff side. As the advocate of the plaintiff was elevated to the Judiciary on 28.07.2000, new advocate came and thereafter the matter was pending for further evidence. In the meantime, an application Exh. 60 was given by the respondent No. 3 to join him in the present proceedings and, thereafter, the issues were framed. The Power of Attorney holder of the defendants has deposed on 14.06.2002 and accordingly on 23.07.2002, application Exh. 115 was given.

6. Mr. Ashish Dagli, the learned advocate appearing for the petitioner has submitted that the Learned Trial Judge has committed serious illegality in rejecting the application on the ground that the deposition of the

Power of Attorney at Exh. 85 was made and since the cross-examination was in progress, at this stage the application cannot be given. He has further submitted that the Learned Trial Judge has committed serious illegality and without being proper application of mind, he rejected the application Exh. 115. He has further submitted that the power of attorney has deposed before the Trial Court by giving exact contrary statement to the statement made by him in the criminal proceedings. Not only that he has deposed before the Court that he is not aware about the blood relations between the parties. Hence, the Trial Court ought to have granted the prayer as prayed for. Mr. Dagli has, therefore, submitted that the impugned order passed by the Learned Trial Judge should be quashed and set aside and the petition be allowed accordingly.

7. This Court has issued rule on 08.10.2004 and further proceedings before the Trial Court were stayed. Despite service of notice, nobody appears on behalf of the respondents.

8. Having perused the memo of petition and the impugned

order passed by the Learned Trial Judge and having heard Mr. Dagli, the Court is of the view that while rejecting the application Exh. 115, the Learned Trial Judge has observed that since the evidence of the plaintiff is over, it is not just and proper to recall the defendant. Moreover, the defendants have examined one Narbheram Bhanjibhai vide Exh. 85 and his cross-examination is in progress. In this view of the matter, the decision taken by the Learned Trial Judge cannot be said to be perverse nor can it be said that it is not in accordance with law. The Court cannot interfere in the interlocutory order passed by the Learned Trial Judge especially when it is not against the principle of law or not in excess of jurisdiction or not in violation of the principle of natural justice.

9. Since the impugned order is an interlocutory order and the jurisdiction vested in this Court under Article 227 of the Constitution of India is very limited, the Court does not want to exercise its discretionary jurisdiction. The petition is devoid of any merits and substance and hence, it is dismissed. It is however clarified that effect of giving evidence through Power of Attorney and alleged

contradictions in his deposition and non-entering into the witness-box by the defendants personally would certainly be examined by the trial Court at the time of disposal of the suit and at that time, the impugned order would not come in the way of the defendants.

10. Subject to the above observation, this petition is dismissed. Rule discharged. Interim relief granted earlier stands vacated.

[K. A. PUJ, J.]

Savariya